

MEMORANDUM

TO: Service List

FROM: William H. Stevens, Jr., Hearing Officer

RE: NSTAR Electric, D.T.E. 03-121 - Revised Ground Rules

DATE: April 12, 2004

CC: Mary Cottrell, Secretary
Staff as assigned

GROUND RULES

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceedings in this matter:

1. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34).

Responses to information requests will not be part of the record unless marked and admitted into evidence.

Parties shall provide responses to information requests no later than fourteen calendar days of receipt of the request. Parties shall not wait for fourteen days to supply all answers, but instead provide the answers as soon as they are completed. Where the computed response date is a Saturday, Sunday, or legal holiday, the response shall be due on the next following Department business day. This time for responses to information requests shall not apply where the established procedural schedule sets a different time. The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance.

For purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, electronic records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

2. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission ("FAX"), or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of FAX, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

3. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be five calendar days following the day on which the request is made.

Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

4. Protected Material

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission.

The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access.

5. Format of Document Filings

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information: (1) set and question number, (2) recitation of request, and (3) identity of person who will support the response.

6. Offering and Pre-Marking of Exhibits

The proponent of an exhibit must offer one original and four bench copies of the proposed exhibit (standard three-hole punch), except for documents that have already been produced in discovery where three bench copies must be offered. The exhibit must be pre-marked, identifying; (1) the docket number; (2) the Exhibit number; (3) date; and (4) Hearing Officer. Nonconforming documents will not be accepted.

Where material exceeding 25 pages is offered for marking and such material is already in the possession of all parties (e.g., information request responses), the proponent may, no later than 9:00 a.m. on the day the material is to be offered for marking, inform all parties and the Department's of the intended use of such material. Nonetheless, the proponent of any such document must provide the Hearing Officer with a pre-marked three-hole punched copy.

If only a part of a document is offered as an exhibit and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

7. Late Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

8. Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and

should identify his method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system may not be used at the hearing.

9. Number of Copies

The Department requires copies to be filed in the following numbers:

Prefiled Testimony - 1 original and 9 copies

Information Requests and Responses - 1 original and 9 copies

Responses to Record Requests - 1 original and 9 copies

Bulk Responses (100 pages or more) - 1 original and 1 copy

Pleadings, Briefs, Motions, Memoranda - 1 original and 16 copies

10. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary of the Department, One South Station, Boston, MA 02110. Please also submit the filings directly to: (1) William Stevens, Legal Division; (2) John Cope-Flanagan, Legal Division; (3) Sean Hanley, Rates and Revenues Requirements Division; (4) Claude Francisco, Rates and Revenues Requirements Division; (5) Jeff Hall, Rates and Revenue Requirements Division; (6) Joseph Passaggio, Rates and Revenue Requirements Division; (7); Meera Bhalotra, Rates and Revenue Requirements Division; (8) Xuan Yu, Rates and Revenues Requirements Division; (9) Robert Harrold, Electric Power Division. Where sixteen copies of a filing are required under these ground rules, 8 copies must be submitted to William H. Stevens, Jr., Hearing Officer and other copies to staff noted above.

All filings must also be sent to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dte.efiling@state.ma.us; and william.stevens@state.ma.us and john.cope-flanagan@state.ma.us or (2) on a 3.5" floppy diskette, IBM-compatible format. The text of the e-mail or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing; and (4) a brief descriptive title or document (e.g., comments or petition to intervene). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word, (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel.

11. Communications Between the Parties

Where information requests are sent to a party by means of FAX (see ground rule number 2), the FAX must be accompanied by telephone notification of the

transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

12. Hearing Arrangements

Evidentiary hearings will be conducted at the offices of the Department at One South Station Boston, Massachusetts. These hearings will begin each day at 10:00 a.m., according to the established schedule.

Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.